IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

CHAMBER SUMMONS NO.772 OF 2007
IN
SUIT NO. 323 OF 1981

The Cotton Corporation of India Ltd. ...Plaintiff.
Vs.
Vardhaman Spg. & General Mills Ltd. ...Defendant.

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Mr. R.C. Shah with Mr. U.Mahajan i/b. Divekar & Co. for the Plaintiff.
Mr.Sandeep Parikh with Mr. Tapan Deshpande i/b. Amarchand Mangaldas & S.A. Shroff & Co.for the Defendant.

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CORAM :DR.D.Y.CHANDRACHUD, J.
July 17, 2007.

P.C.:

Issues were framed in the suit on 16th April 2007. The Chamber Summons before the Court has been taken out by the Plaintiff for recasting issues.

2. The principal contention is that Issue No.6 will not arise since there is an admission by the Defendant that there was a concluded, valid and binding contract between the parties. In order to

appreciate the submission, it would be necessary to extract Issue No.6 as framed, which reads as follows:

> "6. Whether the Plaintiff proves that there was a concluded, valid and binding contract No.G/440 read with letter dated 30th March, 1977 as alleged by the Plaintiff?"

In para 2 of the Plaint, the averment is that in pursuance of the practice of the Plaintiff, two copies of a standard form of contact, duly signed by the Plaintiff, (Contract G/440 dated 18th March 1977) were forwarded to the Defendant for signature. However, it has been averred that the Defendant did not return the copies duly signed. Thereafter, according to the Plaintiff, the Defendant by a letter dated 30th March 1977, confirmed the contract and enclosed two Bank Guarantees.

3. The reply to paragraph 2 of the Plaint is contained in paragraph 7 of the Written Statement. This reply would have to be read together with paragraph 3 of the Written Statement, which contains a prefatory statement prior to a parawise traverse.

4. A perusal of the averments contained in paragraphs 3 and 7 of the Written Statement would prima facie show that the contention of the Defendant is that there was no concluded, valid or binding contract between the parties. In fact, that is how, the opening lines of para 3 are couched. The contention of the Defendant is that the terms of the contract between the Plaintiff and its foreign suppliers were never disclosed to the Defendant and that consequently parties were not ad idem with regard to the conditions of the contract. There is undoubtedly a statement in para 7 of the Written Statement that the Defendant addressed a letter dated 30th March 1977 and that they accepted the contract and in confirmation enclosed two Bank Guarantees. This, however, is immediately followed by a statement that according to the Plaintiff, the Defendant was bound by several other terms and conditions which were not brought to the notice of the Defendant at any time and that in view thereof, there had been no contract between the parties with regard to the same thing in the same sense.

5. Reading the relevant paragraphs of the Written Statement as a whole, therefore, no case has been made out for the deletion of Issue No.6. The issue has been properly raised having regard to the provisions of Order 14 of the Code of Civil Procedure, 1908.

6. In so far as Issue No.7 is concerned, having heard Learned Counsel, I am of the view that the issue would have to be raised and was correctly framed. The defence arises on the basis, inter alia, of the averments contained in sub-paras (a), (b), (c) and (e) of para 2A of the Written Statement as amended. Counsel appearing on behalf of the Plaintiff urges that by the order of the Learned Single Judge dated 5th February 2002, a further amendment was not allowed. However, there are sufficient averments contained in para 2A as amended as it now stands so as to warrant the framing of Issue No.7.

7. Issue No.9 reads as follows:

> "(9) If the answer to issue No.6 is in affirmative, whether the Plaintiff prove that the time was of essence of the contract No.G/440 read with the letter of allotment dated

18th March 1977 ?"

The reference therein to the Plaintiff is an inadvertent typographical error and shall stand corrected as the "Defendant".

8. Issue No.10(b) has been correctly framed in view of the defence taken in paragraph 3 of the Written Statement. Similarly, Issue no.11 would arise on the basis of the averments in para 3 of the Plaint and para 8 of the Written Statement.

9. Issue No.14 would arise on the basis of the averments contained in para 3 of the Plaint and para 10 of the Written Statement.

10. Issue No.17 deals with the question of mitigation of damages. That issue would have to be raised since in para 14, the defence has been taken that the Plaintiff had not taken necessary steps towards mitigation of damages.

11. In these circumstances, there is no merit in the Chamber Summons. The Chamber Summons shall accordingly stand dismissed.

12. Consequential directions have been sought by Counsel appearing on behalf of the Plaintiff at the present stage. The Plaintiff shall file an affidavit of documents within a period of four weeks from today. Affidavit in lieu of Examination-in-Chief of the Plaintiff's witnesses to be filed within a period of four weeks thereafter. The suit shall be listed for directions in regard to the recording of evidence after 8 weeks.

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